

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION	)	MDL No. 1456
	)	Master File No. 01-CV-12257-PBS
	)	Subcategory No. 06-CV-11337-PBS
THIS DOCUMENT RELATES TO: <i>United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al. v. Boehringer Ingelheim Corporation, et al., Civil Action No. 07-10248-PBS</i>	)	Judge Patti B. Saris
	)	Magistrate Judge Marianne B. Bowler

**THE ROXANE DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE CERTAIN  
EXPERT OPINIONS PROFFERED BY PLAINTIFFS' EXPERT MARK G. DUGGAN**

Pursuant to Federal Rules of Evidence 104 and 702, Boehringer Ingelheim Roxane, Inc., Roxane Laboratories, Inc., Boehringer Ingelheim Corporation, and Boehringer Ingelheim Pharmaceuticals, Inc. (collectively, the "Roxane Defendants") respectfully move this Court to exclude certain opinions proffered by Plaintiffs' expert Mark G. Duggan, Ph.D. The Roxane Defendants request an order ruling Duggan's proffered testimony inadmissible, pursuant to *Daubert* and its progeny, because it relies on a flawed methodology to calculate differences in Medicare and Medicaid spending. The methodologies that Duggan uses to compute his differences for many of the allegedly false Medicare and Medicaid claims at issue are neither consistent with accepted standards nor reliable. They should not be allowed to serve as the basis for a damages award, let alone treble damages, and should be excluded under *Daubert*. The grounds for exclusion and relief requested are fully set forth in the accompanying memorandum.

WHEREFORE, the Roxane Defendants respectfully request that the Motion be GRANTED, and relief be provided as requested herein and in the accompanying memorandum.

Dated: March 12, 2010

/s/ Eric T. Gortner

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and Boehringer Ingelheim Pharmaceuticals, Inc.*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on March 12, 2010, a copy to LexisNexis File and Serve for posting and notification to all parties.

\_\_\_\_\_/s/ Eric T. Gortner

Eric T. Gortner